In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1042

JULIAN G. CARR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

1. Petitioner, while on active duty with the United States Air Force, was hospitalized on October 10, 1949, and found to be suffering from a liver disease. The condition led to his retirement from the service on June 30, 1950, with a disability rating of 30 percent and, as provided for in the Career Compensation Act of 1949, 63 Stat. 802, with retirement pay equal to 30 percent of his base pay (Pet. 4). He brought this action in the Court of Claims, asserting that the Compensation Act gives him the right to elect to have his disability retirement pay computed on the basis of laws in effect prior to its enactment and that, therefore, he is entitled to receive retirement pay equal to 75 percent of his base pay.

211-666—60

The relevent provision is Section 415 of the Career Compensation Act. As originally enacted, the Section provided (63 Stat. 825):

> Any member, who, *on the effective date of this Act,* is a hospital patient and who within six months of the effective date of this Act is retired as a result of a physical disability growing out of the injury or disease for which he was hospitalized as of the date of enactment of this Act, may elect to receive retirement benefits computed under the laws in effect on the date preceding the date of enactment of this Act. [Emphasis added.]

As amended in 1950, the Section provides (64 Stat. 158):

> Any member who, *on October 1, 1949,* was a hospital patient and who, prior to January 1, 1951, is retired as a result of a physical disability growing out of the injury or disease for which he was hospitalized, may elect to receive retirement benefits computed under the laws in effect on September 30, 1949. [Emphasis added.]

The "effective date" of the provision here relevant is, as Section 533(a) of the Act specifies,[1] October 1, 1949. The Act was signed into law on October 12, 1949.

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[1] 63 Stat. 841:

> Except as provided in subsections (b) and (c) of this section, [not relevant here] this Act shall become effective on October 1, 1949, and no pay, allowances, or benefits provided herein shall accrue to any person for any period prior thereto.

2. On the basis of these uncontested facts, the Court of Claims ruled that petitioner—who was not a hospital patient on October 1, 1949—has no right of election, under Section 415, either as originally enacted or as amended in 1950.[2] Since the only issue presented is the narrow one of the effective date of the Career Compensation Act, a matter of little prospective application or importance, and because the decision of the Court of Claims is plainly correct, there is no occasion for review by this Court.

a. Petitioner is not eligible to elect under Section 415 because he was not, as that section required him to be, a hospital patient on the effective date of the Act, October 1, 1949. That this is the relevant date for the section, both as originally enacted and as amended, cannot reasonably be disputed.[3] Congress specified in the Act itself that, except for two sections not here relevant, the Act "shall be effective on October 1, 1949." See Section 533(a), *supra*, n. 1. This is to be contrasted with Congress' specification that the effective date of one of the excepted sections was to be "the date of enactment of this Act." See Section 533(b), 63 Stat. 841. Thus Congress was aware that "the date of enactment" might be other than October 1. It is significant that the provision here relied upon by petitioner, Section 415, was inserted into the statute after the dichotomy between the "effective date"—*i.e.*, October 1—and the "date

[2] As the petition does not contain the court's decision, we have reproduced it as an appendix to this memorandum.

[3] Indeed, in the Section as amended, the date of October 1, 1949, is specifically stated. See 64 Stat. 158, *supra*.

of enactment" had been made clear in the bill and in the legislative reports.[4] The provision's sponsor, Senator Butler, was undoubtedly aware of this differentiation, and he carefully maintained it, referring to the "date of enactment" in some places but clearly specifying that, in order to be entitled to elect retirement benefits under the old laws, a serviceman had to be a hospital patient "on the effective date."

b. Petitioner argues, however, that with the enactment of the Compensation Act on October 12, 1949—on which date he was a hospital patient—certain rights provided under the laws replaced by the new legislation were "saved" and became "vested" (Pet. 9–10). He places particular reliance on Section 520, 63 Stat. 834, which provides:

> Any provision of law which, on the date of enactment of this Act, entitles any person to be retired, to receive pay, retired pay, retirement pay, or retainer pay, or other monetary benefit, and which is directly repealed, impliedly repealed, or amended by the provisions of this Act, shall, if the entitlement of such person to such retirement, pay, retired pay, retirement pay, retainer pay, or other monetary benefit is saved by the provisions of this Act, be continued in full force and effect for

[4] Section 415 was a last minute amendment made on the floor of the Senate on September 26, 1949. See 95 Cong. Rec. 13259 (1949). The House and Senate Reports, both mentioning an effective date of October 1, 1949, and an unspecified "date of enactment" (see S. Rep. No. 733, 81st Cong., 1st Sess. 37 (1949); H. Rep. No. 779, 81st Cong., 1st Sess. 45 (1949)), had already been filed.

such entitlement and for such a time as such entitlement may exist.

It is apparent, however, that Section 520 saved provisions of the old law only for those whose entitlement thereto was preserved under the new law. As we have shown, petitioner's entitlement was not so preserved.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

MARCH 1966.

APPENDIX

In the United States Court of Claims

No. 142–64

JULIAN G. CARR

v.

UNITED STATES

Order

This case comes before the court on defendant's motion and plaintiff's cross-motion for summary judgment. Upon consideration thereof, together with the opposition thereto, oral argument of counsel, and the briefs of the parties, it is concluded that plaintiff's claim does not fall within either Section 415 of the original Career Compensation Act of 1949, or Section 415 of the Act as amended, and plaintiff is therefore not entitled to recover and,

IT IS ORDERED that defendant's motion for summary judgment be and the same is granted, plaintiff's cross-motion for summary judgment is denied and plaintiff's petition is dismissed.

By the Court:

WILSON COWEN,
Chief Judge.

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